

Minutes
Catawba County Board of Commissioners
Regular Session, Monday, November 19, 2007 7:00 p.m.

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The Catawba County Board of Commissioners met in regular session on Monday, November 19, 2007 at 7:00 p.m. in the 1924 Courthouse, Robert E. Hibbitts Meeting Room, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Barbara G. Beatty and Commissioners Dan Hunsucker, Lynn M. Lail and Glenn E. Barger.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Lee Worsley, County Attorney Debra Bechtel, and County Clerk Barbara Morris. Deputy County Attorney Anne Marie Pease was absent.

1. Chair Katherine W. Barnes called the meeting to order at 7:00 p.m.
2. Commissioner Lynn Lail led the Pledge of Allegiance to the Flag.
3. Vice-Chair Barbara Beatty asked Senator Jacamin to offer the invocation.
4. Commissioner Dan Hunsucker made a motion to approve the minutes of the Regular Meeting and Closed Session of November 5, 2007. The motion carried unanimously.
5. Recognition of Special Guests:
Prior to recognizing guests, Chair Barnes stated she would begin with the Board's resolution regarding the levying of the one-quarter cent county sales and use tax. On November 6, 2007 a referendum was on the ballot which passed with a large majority to institute an optional quarter cent sales tax for the county. Chair Barnes said the Board was very pleased by the efforts citizen groups and staff and the Board to educate voters on the referendum. She pointed out the Board had been seeking other revenue options besides property tax for over ten years and was pleased this had passed approximately three to one. The following resolution was placed as a public notice and advertised as this being the time and place for action on the resolution. Mr. Lundy pointed out that the Board was very clear with the public that if the tax was approved, the Board would commit that the 3.6 cent property tax that had been planned for the next three years would not be levied. Commissioner Lail made a motion to adopt the resolution. The motion carried unanimously. The resolution reads:

Resolution No. 2007-

**Resolution Levying The One-Quarter Cent (1/4¢)
County Sales And Use Tax**

WHEREAS, The General Assembly has by enacting N.C.G.S. 105-535 in Section 31.17.(b) of Session Law 2007-323 authorized the Catawba County Board of Commissioners to levy a one-quarter percent (1/4%) county sales and use tax; and,

WHEREAS, the Catawba County Board of Commissioners held an advisory referendum on the question of whether to levy a local sales and use tax in the county on November 6, 2007, as required by N.C.G.S. 105-537(b) and the majority voted in favor of the levy of the tax. Proper public notice of the Board's intent to consider this resolution was provided as required by N.C.G.S. 105-537(a); and,

WHEREAS, the Catawba County Board of Commissioners hereby finds that the levy of a One-Quarter Cent (1/4¢) County Sales and Use Tax is necessary to adequately finance the operations of the county.

NOW, THEREFORE, BE IT RESOLVED by the Catawba County Board of Commissioners:

1. There is hereby imposed and levied within Catawba County a one-quarter cent (1/4¢) County Sales and Use Tax authorized by Section 31.17.(b) of Session Law 2007-323 and codified as Article 46 of Chapter 105 of the General Statutes of North Carolina. The tax hereby imposed and

levied shall apply to the same extent and be subject to the same limitations as are set forth in said Session Law 2007-323.

2. Collection of the tax by the North Carolina Secretary of Revenue, and liability therefore, shall begin and continue on and after the first day of April, 2008.

3. The tax levied herein does not apply to the sales price of food that is exempt from tax pursuant to General Statute 105-164.13B.

3. The net proceeds of the tax levied herein shall be distributed by the Secretary of Revenue on a monthly basis to Catawba County as prescribed by N.C.G.S. 105-520. The amount distributed to Catawba County shall not be divided between the county and the municipalities within the county.

4. This Resolution is effective upon its adoption, and a certified copy hereof shall be forwarded to the North Carolina Secretary of Revenue.

Adopted this 19th day of November, 2007.

Chair Barnes then introduced Mr. Larry Bowman, Chair, Catawba County Citizens for Tax Fairness. Mr. Bowman stated their primary interest was to promote the sales tax referendum but their second initiative was to further mitigate the property tax burden on certain home owners by seeking to raise the Homestead Exclusion from \$25,000 to \$35,000. He presented approximately 800 reply cards indicating taxpayers' desire for this increase in the exclusion. He then requested the Board petition the County's legislative delegation to seek this increase in the exclusion and the clerk received the reply cards. Chair Barnes thanked this group for its effort in this regard.

Chair Barnes then introduced a resolution that had been prepared regarding this request. She then read the following resolution into the record:

RESOLUTION 2007- 17
SUPPORTING AN INCREASE TO THE INCOME CRITERIA FOR HOMESTEAD EXCLUSION

WHEREAS, the tax burden on the elderly residents of the State of North Carolina has become overwhelming to this segment of our population on fixed and limited incomes; and

WHEREAS, currently, through State authority utilizing the Homestead Exclusion, Catawba County excludes about \$60 million in value, equating to about \$321,000 in revenues excluded; and

WHEREAS, on August 30, 2007 Governor Easley signed House Bill 1499 which increased the income threshold in 2008 from \$21,200 to \$25,000 and the exclusion amount from the greater of \$20,000 or 50% of the value of the property to the greater of \$25,000 or 50% of the value of the property; and

WHEREAS, in an effort to ease future property tax burden for all its citizens, the Catawba County Board of Commissioners placed a referendum on the November 2007 ballot to levy a one-quarter (1/4¢) county sales tax and, after the majority voted in favor of this tax, by resolution on this date adopted this tax to become effective April 1, 2008; and

WHEREAS, the Catawba County Board of Commissioners desires to further reduce the tax burden on the County's seniors in seeking a further increase in the Homestead Exclusion and has received over 800 expressions of support of this effort.

NOW, THEREFORE, BE IT RESOLVED that the Catawba County Board of Commissioners requests the County's legislative delegation to aggressively pursue an increase in the North Carolina Homestead Exclusion income threshold from \$25,000 to \$35,000.

FURTHER BE IT RESOLVED that copies of this resolution be transmitted to the members of the General Assembly representing Catawba County and to all 100 counties in North Carolina.

Adopted this the 19th day of November, 2007.

Commissioner Hunsucker made a motion to adopt the resolution. The motion carried unanimously. Vice-Chair Beatty then informed the Board that Representative Setzer was unable to attend the evening's meeting but supported this effort.

Chair Barnes then recognized Senator Jacamin and Representative Ray Warren.

6. Comments for Items not on the Agenda. None.

7. Presentation:

Commissioner Lail presented Mickee Wurz, Charge Nurse, Home Health, with a proclamation declaring November as Home and Hospice Care Month in Catawba County, to recognize that in-home health, hospice, and community-based services provide for an individual's health and social needs throughout life; compassionate care which serves expectant mothers, infants, children, adults, the disabled and elderly, and provides love, comfort, and support at the end of life. In-home health, hospice, and community based services enable North Carolina's citizens to access a wide variety of quality health and social services, including preventive care, acute care, sustainable long-term care and palliative care. These services are provided by home health agencies, licensed home care agencies, hospice agencies, adult day care, adult day health care facilities, and home medical equipment companies.

8. Public Hearing:

a. Chris Timberlake, Planner, presented a request of Glenn Fulbright to rezone a 1.83 acre parcel located at 5121 Honest Bob Road in the Balls Creek Small Area Planning District, from R-40 Residential to RC-CD Rural Commercial – Conditional District. The subject parcel is currently occupied by a business that produces erosion and sedimentation control products, and this is the intent for the property if rezoned. Parcels to the north, south and east are zoned R-40 Residential, with one vacant and the rest occupied by single-family residences.

The RC-CD district is intended to provide for the location of offices, services, and retail uses designed in scale with surrounding residential uses, while working to preserve rural character. Conditional zoning is a process through which site and use specific development proposals are submitted for review and approval. Sites approved as conditional zoning districts are limited in terms of use and design, in accordance with approved plans and conditions. Substantive modifications require re-submittal and further consideration by the Board of Commissioners. Generally, the R-40 Residential District is considered a low-density residential and agricultural district, with permitted uses being predominately site-built homes and agricultural uses.

A RC-CD district is generally governed by the dimensional, design and intensity standards of the Rural Commercial general use district. Such requirements limit developments within the RC-CD district to a maximum floor area ratio of 1:5. The parcel size of 1.83 acres (79,714 square feet) would allow a floor area of 15,942 square feet. The main building and storage areas are approximately 5,944 square feet, well within what is allowed.

An existing business (C&K Erosion Control Products) was established on the parcel around 1997. The site plan shows the existing main building used to assemble products, storage areas for materials, and parking areas for employees and equipment. The use is not visible from East Maiden Road or from points along the majority of Honest Bob Road. The existing facility is served by a private well and septic system.

The Balls Creek Small Area Plan serves as the current land use plan for this area. The plan recommended that the future use of this parcel be low-density residential, one dwelling per two acres. The business use of the property would generally be viewed as inconsistent with the small area plan. However, the potential approval of the proposed rezoning would provide for the proper zoning of the property, reflecting the current and long-standing business usage, and the conditional zoning would limit the use and future uses to those approved through the conditional zoning

process. The use of conditional zoning to achieve higher standards in the overall design of commercial projects aids in accomplishing several of the recommendations and guiding principles of the Balls Creek Small Area Plan related to commercial development, including landscaped areas along road frontage, buffering of commercial uses from residential areas, and a focus on quality, community-oriented business. All of these standards have already been met by the existing business.

Staff recommended adoption of a statement affirming the consistency of the rezoning request with the Balls Creek Small Area Plan, and the rezoning of the property from R-40 Residential to RC-CD, based on the purpose of the RC-CD district and the higher standards placed on the development through the conditional zoning process. The Catawba County Planning Board conducted a public hearing on October 29, 2007. The applicant was the only person who spoke concerning this request. The Planning Board voted unanimously to recommend the rezoning of the property from R-40 Residential to RC-CD Rural Commercial-Conditional District, based on the conditions cited above.

Chair Barnes noted this was the time and place advertised for the public hearing regarding this rezoning request. No one came forward to speak for or against the rezoning and the public hearing was closed. Commissioner Barger made a motion to adopt the following consistency statement and zoning amendment. The motion carried unanimously.

ZONING MAP AMENDMENT CONSISTENCY STATEMENT AND RECOMMEDATION

On November 19, 2007 the Catawba County Board of Commissioners conducted a Public Hearing for the purpose of considering a zoning map amendment for Glenn Fulbright (Case #R2007-17).

Upon considering the matter, the Catawba County Board of Commissioners finds the item to be inconsistent with the Balls Creek Small Area Plan Future Land Use Map 5A, but finds it consistent with the following recommendations and guiding principles of the Balls Creek Small Area Plan:

1. Recommendation: Landscaped areas along the road frontage (*This recommendation has been met, as the plan shows shade trees along the road frontage;*
2. Guiding Principle: Buffer commercial uses from residential areas (*This has been met, as the perimeter buffering will be provided between the commercial use and adjacent residentially zoned properties;*
3. Guiding Principle: Focus on quality, community-oriented business (*This has been met, as the business offers a service utilized by the local community*).

The Catawba County Board of Commissioners therefore approves the zoning map amendment. This recommendation was affirmed be a vote of 5 - 0 of the Catawba County Board of Commissioners.

Ordinance No. 2007-_____

AMENDMENT TO THE CATAWBA COUNTY ZONING MAP

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, that the Catawba County Official Zoning Atlas is hereby amended by rezoning the following described property from R-40 Residential to Rural Commercial-Conditional District (RC-CD).

One parcel totaling 1.83 acres located at 5121 Honest Bob Rd. in the Balls Creek Small Area Planning District, Caldwell Township, and further identified as Parcel Identification Number 3666-03-44-2315.

PLAN CONSISTENCY STATEMENT:

Pursuant to NCGS 153A-341, and upon consideration of the recommendations and guiding principles of the Balls Creek Small Area Plan, the Catawba County Board of Commissioners finds the rezoning request to be consistent with the Balls Creek Small Area Plan.

This the 19th day of November 2007.

b. Chris Timberlake, Planner, presented a request of multiple applicants along George Hildebran Road and RH Road to include twelve parcels totaling 35.28 acres in the Doublewide Manufactured Home-Overlay (DWMH-O) district. The properties are located in the Mountain View Small Area Planning District. Five parcels to the north, six to the south, one to the east and one to the west are currently zoned R-40 Residential, with the majority occupied by single-family residences. One parcel is vacant, two are currently unable to be built upon and one is vacant and being used for agricultural purposes. The subject parcels are zoned R-40 Residential, with seven currently occupied by single-family residences. One has a deteriorating structure on it and four are properties not yet built upon. An additional parcel, not included in this request, zoned R-40 Residential and currently occupied by a single-family residence, is surrounded by all of the properties to be included in the DWMH-O district and staff recommended it also be included in the request.

The Catawba County Unified Development Ordinance (UDO), Section 44-432, Doublewide Manufactured Home – Overlay (DWMH-O) “establishes a class A doublewide or multi-section overlay district to provide opportunities for the siting of affordable housing, implement small area plan policies regarding the location of manufactured homes, and comply with the requirements of North Carolina General Statutes 153A-341.1”.

Samantha Lowman, one of the applicants, met with County staff to discuss including only one parcel in the DWMH-O district. After discussing the concept of spot zoning with the applicant and the difficulties associated with small area rezoning requests, additional applications were received, bringing the total number of parcels in the request to twelve. The properties proposed to be included in the DWMH-O total 35.28 acres in size. Including the one parcel that is surrounded by all the requesting parcels would bring the acreage to 36.5 acres. The current R-40 Residential District (which allows one dwelling per acre) would not permit any doublewide manufactured homes on eleven of the parcels. One of the parcels has an existing singlewide that could be switched out to a doublewide as a matter of right. If the properties were included in a DWMH-O with a total of 35.28 acres, if the existing uses were removed, and if the property was further subdivided, 25 to 35 doublewide manufactured homes could be placed in this area. The number of lots would depend on right-of-way locations, lot dimensions, density, soil suitability and topography. If the properties were not further subdivided, approximately six doublewides could be placed in the area by right. Approval of this proposed DWMH-O overlay district would not allow a manufactured home park (MHP) and does not reach the level of density associated with a MHP (1 dwelling per 12,000 square feet or approximately 127 spaces on 35.28 acres).

The Mountain View Small Area Plan serves as the current land use plan for this area. Guiding principles in the plan include providing for the location of manufactured homes and encouraging housing options for people in all stages of life. The plan recommends manufactured homes be directed to R-2 districts. When the plan was adopted, this area was in an R-2 district and would have remained in the R-2 district. Therefore, the request does not appear to deviate from the recommendations of the Plan. While the request is inconsistent with the County Overlay Zoning Map approved on February 6, 2007, staff determined the request was reasonable for consideration, based on the size of the area associated with the request and the recommendations and guiding principles in the small area plan. It does not change the current R-40 zone; it only adds an overlay zone that would allow doublewide manufactured homes at the property owner's option. Staff noted that if the DWMH-O district was applied to this area, a significant number of similar requests could follow.

Staff recommended adoption of a statement regarding the consistency of this request with the Mountain View Small Area Plan and that the Board consider applying the DWMH-O district to the

area based on 1) the request being consistent with the guiding principles and recommendations of the Mountain View Small Area Plan as noted in the previous paragraph; (2) the DWMH-O district's providing maximize home ownership choices in a rural area of the county adjacent to rural areas of Burke County; and (3) since the area requested for the DWMH-O district is in a portion of the county outside of any major corridors identified for restricted use of manufactured homes in the UDO and Zoning Map Amendment process.

The Catawba County Planning Board conducted a public hearing on October 29, 2007. Fourteen citizens spoke during the public hearing. Four spoke in favor of the request, while nine spoke in opposition. Those speaking in favor cited the benefit of the rezoning for the applicants, allowing them to place a doublewide on their property as a "starter home", and that the applicants deserved a right to start a family in their own home. Those in opposition cited an opinion that doublewides are not in keeping with the Mountain View community; were opposed to mobile homes in the area and did not believe they were in the best interest of the community; believed property values would decrease; were opposed to all thirteen tracts being included in the DWMH-O overlay district; and believed the area should retain its rural culture. The Planning Board voted unanimously to recommend the Board of Commissioners deny the request based on surrounding property owners being in opposition to the request; the possibility of decreasing the value of "stick-built" homes in the area; and the inconsistency of the request with the County Overlay Zoning Map approved on February 6 2007.

Chair Barnes noted that this was the time and placed advertised for this public hearing and opened the public hearing.

The following people came forward to speak:

Samantha Lowman – original applicant – in favor of rezoning – believed this was a right she should have to place a double-wide manufactured home on her property.

Helen Wright – opposed – would not improve the community – and not in keeping with the community.

Mr. Lowman – father of applicant – in favor of rezoning – not fair to not allow them to place a double-wide manufactured home on their property.

Nancy Satterwhite – opposed – not in the best interest of the community.

Mark Cain – opposed – Senator Jacamin is his father-in-law – had worked on his lot, plans to build a home – double-wide manufactured homes not in keeping with community.

Senator Jacamin – opposed – originally bought his land to prevent a trailer park from going in 12 years ago – not in best interest of the community or other homeowners.

Jerry Satterwhite – opposed – believed it would be a detriment to property values and the Board should follow the UDO.

Don Fuller – Attorney for Senator Jacamin – opposed – size of tract could have as many as 36 mobile homes; not consistent with Mt. View plan; inconsistent with UDO; would open the door for more manufactured homes; incompatible with community.

Jim Smulka – opposed – should follow UDO, set dangerous precedence to go against UDO after so much work had gone into the Ordinance.

Neil Lowman – original applicant – in favor of rezoning – not pushing the rezoning of all 35 acres – just his lot – his manufactured home would be surrounded by trees.

Dr. Wes Cardwell – opposed – would devalue surrounding properties.

Chair Barnes then closed the public hearing. Commissioner Hunsucker asked what the application fee was and Mr. Timberlake indicated it was \$750.00. Chair Barnes voiced her concerns regarding any change to the zoning set forth in the Unified Development Ordinance, and the County's inability to rezone the Lowman's property only, because that action would equate to spot zoning, and concurred with the reasons set forth by the Planning Board for denying this request. Commissioner Hunsucker stated he was not in favor of the rezoning and suggested the Lowman investigate a modular for the property but he felt that the Lowman's had been caught in the process and their initial request to rezone their one four acre parcel had developed into this multi-applicant request and for that reason he suggested refunding their application fee. Commissioners Barger and Lail agreed with this suggestion. Commissioner Hunsucker made a motion based on the below inconsistency statement and directed the Planning Department to refund the rezoning application fee for the Lowman's since their initial application to rezone one parcel developed into a multi-parcel rezoning request. The motion carried unanimously. The following consistency statement applied:

ZONING MAP AMENDMENT CONSISTENCY STATEMENT AND RECOMMEDATION

On November 19, 2007 the Catawba County Board of Commissioners conducted a Public Hearing for the purpose of considering a zoning overlay map amendment to expand the Doublewide Manufactured Home-Overlay district (Case #R2007-16).

Upon considering the matter, the Catawba County Board of Commissioners finds the item to be **inconsistent** with the Official Overlay Zoning Map and denies the zoning overlay map amendment. This **denial** was affirmed by a vote of 5 - 0 of the Catawba County Board of Commissioners.

c. Susan Ballbach, Senior Planner, presented a proposed amendment to Table 44-404-1, Dimensional Standards, and the accompanying notes, and Sec. 44-404(h) Height, of the Unified Development Ordinance (UDO). After discussions by the Board regarding fairness and equity of these dimensional standards and the application of these standards to one sector and not the other, an exemption from height requirements for fire, rescue, and law enforcement facilities, prison facility guard towers, schools, hospitals, and government buildings was removed from the proposed amendment. The amendment modified height restrictions on certain structures, which, because of their iconic nature/historical attributes or due to their functional requirements, need greater height allowances and applies to churches/synagogues and places of worship that apply for and qualify for tax exempt status with the County. The amendment increased the maximum allowable height to 70 feet. In addition, steeples and belfries, which project above the total height of the structure, would be allowed to be of a height equal to that of the worship structure. The Planning Board conducted a public hearing on the proposed amendments to the UDO Table 44-404-1, Dimensional Standards, and the accompanying notes at the October 29, 2007 meeting. No one spoke during the public hearing. The Planning Board voted 8-1 in favor of the proposed amendment.

Chair Barnes noted this was the time and place advertised for the public hearing and opened the floor for comments. No one spoke for or against the amendment. The public hearing was closed.

Commissioner Barger was in favor of tabling the discussion regarding the standards for public and private sector building. Commissioner Hunsucker moved to go forward with Section B of the proposed ordinance which applied to churches/synagogues and places of worship and the section which applied to steeples and belfries. The motion carried unanimously. The following ordinances were adopted:

Ordinance No. 2007-____

BE IT ORDAINED that the Catawba County Code of Ordinances, Chapter 44, Zoning, Table 44-404-1, Dimensional standards, and the accompanying notes, is hereby amended to read as follows:

Table 44-404-1. Dimensional standards.

	Density (maximum dwelling units per acre)	Floor Area Ratio (maximum)	Lot Size (minimum, square feet)	Lot Width (minimum, feet)	Front Setback (minimum, feet)	Side Setback (minimum, feet)	Rear Setback (minimum, feet)	Height (maximum, feet) ⁽³⁾	Gross leasable area (GLA) max. per development, square feet
Rural Conservation (RCon)	0.2	-	217,800 (5acres)	250	100	30	50	35	-
Residential (R-80)	0.5	-	Single family-80,000 Duplex – 120,000	150	30	15	30	35	-
Residential (R-40)	1.0	-	Single family– 40,000 Duplex– 60,000	100	30 ⁽¹⁾ 80 ⁽²⁾	15	30	35	-
Residential (R-30)	1.5	-	Single family – 30,000 Duplex –45,000	75	30	15	30	35	-
Residential (R-20)	2.0	-	Single family – 20,000 or 15,000 with public water and/or sewer Duplex –30,000 or 22,500 w/ public water and/or sewer	75	30	15	30	35	-
Residential (R-15)	3.0	-	Single family - 15,000 Duplex – 22,500	75	30	15	30	35	-
Residential (R-12)	3.6	-	Single family – 12,000 Duplex –18,000	75	20	10	20	35	-
Residential (R-10)	4.4		Single family – 10,000 Duplex –15,000	60	20	10	20	35	
Residential (R-7)	6.2		Single family - 7,000 Duplex –10,500	60	20	10	20	35	
Office-Institutional (O-I)		1:5	20,000	100	30	20	30	35	-
Rural Commercial (RC)		1:5	20,000	100	30	20	30	35	15,000
Highway Commercial (HC)		1:3	40,000	150	35	20	35	50	50,000
Light Industrial (LI)		1:3	40,000	100	30	25	35	50	-
General Industrial (GI)		1:2.5	60,000	150	40	25	35	50	-

Notes:

⁽¹⁾ Applies to the lot line or lot edge that abuts an internal subdivision road.

(2) Applies to the lot line or lot edge that abuts an existing external roads. For existing lots of record which are vacant prior to the effective date of the UDO (February 6, 2007), the 80-foot setback requirement must be met if land area is available that can accommodate the house, septic system and well. If the required setback cannot be achieved, then the average setback of the surrounding housing units should be utilized in order to obtain uniformity; however, in no case can the minimum yard setback be less than 30 feet. Appeals to the setback requirement can be made to the Board of Adjustment in accordance with Sec. 44-202.

In lieu of the 80-foot setback for new lots created after the effective date of the UDO (February 6, 2007) one of the following must be provided:

- a. If 500 feet of road frontage is available, a 40-foot setback containing a 30-foot wide berm with accompanying landscaping along all existing external road frontage; or
- b. If 500 feet of road frontage is available, a 40-foot setback containing a 30-foot wide landscaped strip containing a solid landscaped screen along all existing external road frontage. The landscaped strip would contain a combination of trees, shrubs and ground cover (grass, mulch, etc.), either in a straight line or off-set, to cover a 30 foot wide area.

(3) Churches/synagogues and places of worship, that apply for and qualify for tax exempt status with the County, may have a maximum height of 70 feet. In addition, steeples and belfries, which project above the total height of the structure, are allowed to have additional height, equal to that of the worship structure.

This ordinance shall become effective on November 19, 2007.

Ordinance No. 2007-__

BE IT ORDAINED that the Catawba County Code of Ordinances, Chapter 44, Zoning, Sec. 44-404, Dimensional regulations, and the accompanying notes, is hereby amended to read as follows:

Sec. 44-404 Dimensional regulations

- (h) *Height.*
- (1) *Excluded portions of structures.* Except where specifically provided otherwise, the height limitations of this Chapter do not apply to:
 - a. Any roof structures for housing elevators, stairways, tanks, ventilating fans, solar energy collectors, or similar equipment required to operate and maintain a building, provided that such structures shall not cover more than 20% of the roof area or extend over 10 feet in height;
 - b. Spires, ~~steeples, belfries,~~ cupolas, domes, monuments, water towers, skylights, flagpoles, vents, construction or mining cranes or draglines, or similar structures, which may be erected above the height limit;
 - c. Firewalls or parapet walls provided that such walls shall not extend more than 5 feet above the roof.
- (2) *Aviation hazard.* It is the responsibility of the property owner locating a structure within 5,280 feet of a documented public/private n a certification from FAA and/or NCDOT verifying that the height of the proposed structure will not be an aviation hazard.

This ordinance will become effective November 19, 2007.

d. Susan Ballbach, Senior Planner, then presented a proposed amendment to Sec. 44-620, Public Use Facility, of the UDO. The purpose of the amendment is to reduce front, side and rear setback requirements for public use facilities and clarify parcel perimeter buffer requirements. Several public use facilities (i.e. law enforcement, fire stations, municipal buildings, community centers, etc.) are located throughout the county. As the county grows in population, several of these facilities will need to be enlarged or relocated to adequately serve the public. Since enlarging a current facility may be more cost effective than building a new structure and many of these facilities may not have the land area needed to expand, the UDO was re-examined to determine if 50-foot front, rear and side setbacks were necessary. It was proposed that the front, side and rear setbacks be reduced to 35 feet to allow for an expansion to these type of facilities on an existing parcel.

Along with the setbacks, the UDO currently requires a 15-foot buffer, which could be filled with appropriate vegetation or a 6-foot opaque structure, such as a solid masonry wall or solid fence. The Planning Board conducted a public hearing on the proposed amendments and no one spoke during the hearing. The Planning Board voted 9-0 in favor of the proposed amendment.

Chair Barnes noted this was the time and place advertised for the public hearing on this proposed amendment and asked anyone wishing to speak to come forward. No one came forward to speak for or against the amendment. Chair Barnes closed the public hearing.

Discussions by the Board revealed that while the proposed amendment reduced the required setbacks for these public use facilities, the setbacks were still equal to or greater than residential, commercial or industrial setback requirements.

Vice-Chair Barbara Beatty made a motion to approve the proposed amendment. The motion carried unanimously. The following ordinance applies:

Ordinance No. 2007-____

BE IT ORDAINED that the Catawba County Code of Ordinances, Chapter 44, Zoning, Sec. 44-620, Public use facility, is hereby amended to read as follows:

Sec. 44-620. Public use facility.

- (a) The facility must have frontage on a public street.
- (b) Front, rear, and side setbacks must be a minimum of 35 feet.
- (c) The parcel perimeter buffer standards of Sec. 44-523(f) must be met.

This ordinance shall become effective on November 19, 2007.

e. Susan Ballbach, Senior Planner, presented a proposed amendment to Sec. 44-685, Wireless Facilities, of the UDO. This amendment, which would be effective on December 1, 2007, would comply with modifications to North Carolina General Statutes 153A-349.50 through 349.53, which address wireless communication facilities, and will be effective on December 1, 2007. The modified North Carolina statute states that local governments may no longer ask tower owners/builders or service providers for data perceived as information pertaining to a wireless company's business decisions. The UDO currently requires those wanting to construct new towers to prove a need for the facility through propagation studies. The County's intent was to prevent the degradation of area aesthetics due to a proliferation of unneeded towers. The County can no longer require proof of need as a requirement to obtain a special use permit to build the tower; however, it is still important to prevent the construction of "multiple spec" towers, which may or may not ever be used. Local governments must issue a special use permit, but may condition approval on the existence of a provider that will locate on the tower, and that the tower be constructed within 24 months. According to the proposed UDO amendment, the special use permit will be issued, but a "hold" will be put on

the permit to prohibit construction starting before a contract is submitted, ensuring a service provider will locate on the tower within 60 days of tower construction. If the tower is not constructed within 24 months, the special use permit would become null and void. The County's UDO currently requires propagation studies from those requesting to co-locate on existing towers or structures, in order to prevent higher spaces from being filled when wireless coverage objectives could be met by locating on a lower position of the tower. The County's intent was to eliminate the need for additional towers. Under the modified State statute, the County can no longer use propagation studies to require service providers to locate on a particular space of the tower. While service providers do not have to prove a need to locate on an existing tower or structure, the modified State statute and the proposed UDO amendment requires that existing facilities be co-located, as opposed to constructing a new tower, if "reasonably feasible".

The proposed amendment would exempt State and Federal entities, with restrictions, and non-profit fire and rescue departments in coordination with the County's 911 emergency operations and address environmental concerns associated with lighting and guyed towers. Since consultant costs will be included in permit fees under the amended State statute, the amendment to the Catawba County UDO would revise the County's fee schedule to reflect a co-location and modification review fee of between \$1500 and \$10,000; change a new tower construction fee from \$5000 to \$13,500; and delete a recertification fee of \$250. **NOTE: The previous sentence should read that the County's fee schedule was amended to change a co-location and modification review fee from \$1500 to \$10,000. The Board will consider action as its January 21, 2008 meeting to amend these minutes to reflect the actual fee change it approved on November 19, 2007.**

The Catawba County Planning Board held a public hearing on the proposed amendment on October 29, 2007. No one spoke at the hearing. The Planning Board voted unanimously to recommend approval of the proposed amendment. The Planning Board voted 9-0 in favor of the proposed amendment.

Chair Barnes noted this was the time and place advertised for this public hearing regarding this proposed amendment and asked anyone who wished to speak to come forward. No one spoke for or against this amendment. Chair Barnes closed the public hearing. Commissioner Hunsucker asked where the environmental concerns regarding the bird originated and Ms. Ballbach stated the issue had come up when staff was working on the parks master plan and she researched the issue and the environmental section was added. Commissioner Lail asked if the security fee was used for dismantling unused towers was an insurance/bond type policy so the County would be covered if a company went out of business and this was confirmed. Commissioner Lail made a motion to approve the proposed amendment. The motion carried unanimously. The ordinance is as follows:

Division 4. Facilities

Wireless

Purpose: The Telecommunications Act of 1996 affirmed the County's authority concerning the placement, construction and modification of wireless telecommunications facilities. The North Carolina General Assembly adopted additional regulations through general statutes 153A-349.50 through 153A-349.53, effective December 1, 2007. The County finds that wireless telecommunications facilities may pose a unique hazard to the health, safety, public welfare, character and environment of the County and its citizens. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its citizens. In order to insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, wireless telecommunications facilities application and permit process which complies with the Telecommunications Act of 1996, and North Carolina statutes 153A-349.50 through 153A-349.53. The intent of this Chapter is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the citizens of the County. In order to ensure that the placement, construction,

and modification of wireless telecommunications facilities protects the County's health, safety, public welfare, environmental features and the nature and character of the community and neighborhood and other aspects of the quality of life, and is consistent with the County's adopted comprehensive plan and development policies, the County hereby establishes an overall policy with respect to a zoning authorization permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- ◆ *Implementing an application process for person(s) seeking a zoning authorization permit for wireless telecommunications facilities;*
- ◆ *Establishing a policy for examining an application for and issuing a zoning authorization permit for wireless telecommunications facilities that is both fair and consistent.*
- ◆ *Establishing reasonable time frames for granting or not granting a zoning authorization permit for wireless telecommunications facilities, or re-certifying or not re-certifying, or revoking the zoning authorization permit granted under this Chapter.*
- ◆ *Promoting and encouraging, wherever possible, the sharing and/or collocation of wireless telecommunications facilities among service providers;*
- ◆ *Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner as to minimize any adverse aesthetic impacts to the land, property, buildings, and other facilities adjacent to, surrounding, and in the same general area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.*

Sec. 44-685. Applicability.

(a) No person shall be permitted to site, place, build, construct, modify, or prepare any site for the placement or use of, wireless telecommunications facilities as of the effective date of this Chapter (July 1, 2003) without having first obtained a zoning authorization permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no zoning authorization permit under this Chapter is required for those non-commercial exceptions noted in the definition of wireless telecommunications facilities.

(b) The holder of a special use permit must notify the County of any intended changes that constitute a modification of a wireless telecommunication facility and apply to the County to modify, relocate or rebuild a wireless telecommunications facility. Nothing in this Chapter shall be deemed to require an approval of a permit for maintenance of existing antennas or base station electronic equipment at a wireless transmission facility.

(c) The collocation and/or shared use of antennas on existing telecommunication towers or compatible use structures, such as utility poles, water towers, and other towers must comply with this Chapter and are subject to administrative review by the County.

(d) Construction of new wireless telecommunications facilities must comply with the requirements of this Chapter.

(e) All wireless telecommunications facilities existing on or before the date of adoption of this Chapter (July 1, 2003) will be allowed to continue as they presently exist. If any modification to existing wireless telecommunications facilities, other than the modification, relocation or replacement of existing antenna(s) with functionally identical antennas or antennas of the same size and weight, or base station electronic equipment, is done the entire wireless telecommunication facility must comply with this Chapter.

(f) The maintenance of any components of a wireless facility, where the replacement is identical to the component being replaced, or that involve normal repair and maintenance of the facility is exempt from the review process. Maintenance, by definition cannot increase the height of the antennae or structure, increase the footprint of the facility, increase the weight load on the tower or structure or involve additional construction or site modification.

(g) Facilities used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial

telecommunications which are 90 feet or less in height are exempt from this Chapter, except for meeting setback requirements shown in Sec. 44-685.11.

(h) State and federal applicants are exempt from the regulations in this Chapter.

(i) Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11a,b,g services (i.e. WI-FI and Bluetooth) where the facility does not require a new tower or increase the structure height to which it is being attached.

(j) Facilities used for non-profit fire and/or rescue departments, in conjunction with County emergency 911 operations are exempt from this Chapter, except for meeting setback requirements shown in Sec. 44-685.11. The facility can be exempted from setback requirements if the following conditions are met:

(1) The adjacent landowner signs a written, notarized acknowledgment of their consent to the waiver of the setback;

(2) The waiver is recorded at the register of deeds in both the grantor's and grantee's names, and a copy of the recorded document is given to the planning department; and

(3) There is no dwelling located within the communication facility setback area.

(k) The installation of battery backup systems to existing facilities, is exempt from this Chapter, but must meet building inspection requirements.(l) Any and all representations made by the applicant on the record during the application process, whether written or verbal, will be deemed a part of the application and may be relied upon in good faith.

Sec. 44-685.01. Definitions of terms specific to this Chapter.

ANSI – American National Standards Institute

Abandoned towers – Towers which have no active telecommunications service providers on the tower, for a period of 5 or more years.

Accessory facility or structure - An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

Alternative tower structure - Clock towers, sculptures, bell steeples, light poles and similar alternative-design mounting structures that conceal the presence of antennas or towers and are architecturally compatible with the area.

Applicant - Any person or entity submitting an application for a zoning authorization permit for wireless telecommunications facilities.

Application - All necessary and appropriate documentation that an applicant submits in order to receive a zoning authorization permit for wireless telecommunications facilities.

American National Standards Institute (ANSI) – The entity which sets the requirements by which existing towers are evaluated for ongoing safety.

Antenna - A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. This includes, but is not limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the County's siting, building and permitting authority.

BOA – Catawba County Board of Adjustment.

BOA - Catawba County Board of Adjustment.

BOC - Catawba County Board of Commissioners.

Board of commissioners (BOC) - Catawba County Board of Commissioners.

Collocation - The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks. In a collocation, the height of the tower or structure cannot be increased by more than 6 feet. Appendages are not permitted.

Commercial impracticability or commercially impracticable - The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project.

Completed application - An application that contains all information and/or data necessary to enable the County to evaluate the merits of the application, and to make an informed decision with respect to the effect and impact of wireless telecommunications facilities on the County in the context of the permitted land use for the particular location requested.

DAS – Distributive Access System

Distributive access system (DAS) - A technology using antenna combining technology allowing for multiple carriers or wireless service providers to use the same set of antennas, cabling or fiber optics.

EPA - State and/or Federal Environmental Protection Agency or its duly assigned successor agency.

FAA - Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC - Federal Communications Commission, or its duly designated and authorized successor agency.

Free standing tower - A tower that is not supported by guy wires and ground anchors.

Geomorphologic study - A study that shows the structural relationship of the soils and the appropriateness of the soils for the foundation of a wireless telecommunication tower as designed.

Height - When referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightening protection device.

Modification or modify - The addition, removal or change of any of the physical and/or visually discernable components or aspects of a wireless facility, such as antennas, cabling, generators, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification and qualifies as a collocation.

Maintenance – Replacement of plumbing, electrical or mechanical elements, that may or may not require a building permit, but does not constitute a modification according to the definition in this Chapter. The replacement of any components of a wireless facility where the replacement is identical, or substantially identical, to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding additional weight or equipment. Upgrading to equipment, such as heavier cable or antennae, that would increase the weight load on the tower is not considered maintenance, but rather is considered a modification and must to through the permitting process.

Necessary – Technology that is required for the equipment to function, and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service that is intended and described in the narrative of the application.

Person - Any individual, corporation, estate, trust, partnership, joint stock company, or association of 2 or more persons having a joint common interest.

Personal wireless facility - See definition for wireless telecommunications facilities.

Personal telecommunications service (PTS) - Has the same meaning as defined and used in the 1996 Telecommunications Act.

Preexisting towers and antennas - Any tower or antenna on which a permit has been properly issued prior to the effective date of the ordinance (July 1, 2003) from which this definition is derived.

Radio or television transmitting facility and radio or television receiving facility - The use of land, buildings, or structures for the aboveground transmission or reception of airborne radio or television signals, including all transmitting and receiving towers, dishes and antennas, except accessory radio or television receiving antennas and dishes.

Special use - A use which would not be appropriate generally or without special study throughout the zoning district but which, if controlled as to number, size location or relation to the neighborhood, would promote the public health, safety and general welfare. All special use requests will be reviewed, and approved or denied, by the board of adjustment.

Special use permit - The official document or permit by which an applicant is allowed to file for a building permit to construct or increase the height and use wireless telecommunications facilities as granted. The permit is revocable for cause.

Stealth technology - To use techniques and/or technology intended to minimize adverse aesthetic and visual impacts on, and harmonize with, the land, property, buildings, and other facilities in generally the same area as the requested location of such wireless telecommunications facilities, by using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such technology as DAS, or its functional equivalent of camouflage, where the tower is disguised to make it less visually obtrusive and not recognizable to the average person as a WTF.

Telecommunications - The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunication site - See definition for wireless telecommunications facilities.

Telecommunications structure - A structure used in the provision of services described in the definition of wireless telecommunications facilities.

Temporary - Something that exists or is intended to exist for fewer than 90 days.

Tower – Any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

Tower structure, alternative - Clock towers, sculptures, bell steeples, light poles and similar alternative-design mounting structures that conceal the presence of antennas or towers and are architecturally compatible with the area.

Towers and antennas, preexisting - Any tower or antenna on which a permit has been properly issued prior to December 16, 1996.

WTF – Wireless Telecommunications Facility.

Wireless telecommunications facility - A structure, facility or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes without limit, the telecommunication site, towers of all types and kinds, including, but not limited to

free standing towers, guyed towers, mono poles, and similar structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other similar structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC but not expressly exempt from the County's siting, building and permitting authority.

Zoning authorization permit - A permit issued for residential and nonresidential uses, prior to any land or structural improvements, stipulating conditions for compliance with this Chapter as to design, use, activity, height, setbacks, density, site planning, special use and/or special district development.

Zoning compliance certificate - A document issued by the County after construction for nonresidential uses, and required before occupancy, with the exception of single family dwellings, stating that detailed site plan was complied with, and the property can be used for the purpose stated on the zoning authorization permit.

Sec. 44-685.02. Pre-application meeting.

(a) A pre-application meeting is required, unless waived by the County. The purpose of the pre-application meeting is to address issues which will help to expedite the review and permitting process. The applicant will be provided a written or electronic copy of the instructions for completing an application at or before the pre-application meeting. The instructions are controlling regarding the form and substance of the issues addressed in the instructions and must be followed.

(b) Depending upon recent site visits, a pre-application site visit may be waived, providing certain criteria can be met.

Sec. 44-685.03. Relief.

Any applicant or permittee (person party to the zoning authorization permit) desiring relief or exemption from any aspect or requirement of this Chapter may request such from the County at a pre-application meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit, a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the County. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the County. The applicant must bear all costs of the County in considering the request and the relief is not transferable to a new or different holder of the permit or owner of the tower or facilities without prior written authorization from the County. Authorization will not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant affect on the health, safety and welfare of the County, its residents or other service providers.

Sec. 44-685.04. Shared use of wireless telecommunications facilities and other structures.

(a) Shared use of existing wireless telecommunications facilities is preferred by the County, as opposed to the construction of a new telecommunications support facility. Where such shared use is unavailable, location of antennas on other pre-existing structures is preferred. The applicant must submit a comprehensive report inventorying existing towers and other appropriate compatible structures within 4 miles of any proposed new tower site, unless the applicant can show that some other distance is more reasonable, outlining opportunities for the shared use of existing facilities and the use of other pre-existing compatible structures as a preferred alternative to new construction.

(b) An application must address collocation as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the County why collocation is commercially or otherwise impracticable including if the owner of the tower is unwilling to enter into a contract for such use at fair market value. The County will require information necessary to determine whether collocation on existing structures is reasonably feasible.

(c) An applicant intending to locate on an existing telecommunications tower or other compatible structure is required to document the intent of the existing owner to permit its use by the applicant. (d) Such shared use must consist only of the minimum antenna array technologically required to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.

Sec. 44-685.05. Location of wireless telecommunications facilities.

(a) Applicants for wireless telecommunications facilities must locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one being the highest priority and 4 being the lowest priority.

(1) On existing telecommunications towers or compatible use buildings or structures, such as tall utility poles;

(2) On other industrial, commercial, or residential property, located outside a major subdivision;

(3) In a major subdivision; and

(4) In the Mixed Use Overlay (MUC-O), on Bakers Mountain, on Anderson Mountain.

(b) If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

(c) An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application must address collocation as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the County why collocation is commercially or otherwise impracticable including if the owner of the tower is unwilling to enter into a contract for such use at fair market value. The County will require information necessary to determine whether collocation on existing structures is reasonably feasible. (d) An existing lease or lease option for a particular piece of property is not, in and of itself, grounds for locating a tower or wireless facility where the County deems it not to be in the best interest of the County and the public.

(e) Notwithstanding the above, the County may approve any site within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the county and its inhabitants and will not have a negative effect on the nature and character of the community and neighborhood.

(f) The applicant must submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected must be included with the application.

(g) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an application for any of the following reasons:

(1) Conflict with safety and safety-related codes and requirements;

(2) Conflict with traffic laws or adverse impact upon traffic needs or definitive plans for changes in traffic flow;

(3) Adverse impact upon historic nature or character of a neighborhood or historical district;

(4) The use or construction of wireless telecommunications facilities, which is contrary to an already stated purpose of a specific zoning or land use designation;

(5) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers; or

(6) Conflicts with the provisions of this Chapter.

(h) Notwithstanding anything to the contrary in this Chapter, for good cause shown, such as the ability to utilize a shorter or less intrusive facility elsewhere and still accomplish the primary service objective stated on the application the County may require the relocation of a proposed site. This may require the applicant to use more than one site to provide substantially the same service if the relocation could result in a less intrusive facility or facilities, singly or in combination. The existence of a lease that was entered into prior to the approval of an application does not constitute justification for the requested location.

Sec. 44-685.06. Height of telecommunications tower(s).

(a) The maximum permitted total height of a new tower is 120 feet above pre-construction ground level, unless it can be proven that additional height is necessary to provide service in the intended service area.

(b) All new towers must be designed to structurally support a total of at least 6 wireless facilities similar in size, scope and weight to those of the initial carrier attaching to the tower.

(c) Subject to the test of commercial impracticability, the County shall not be obligated to grant a special use permit for a new tower simply to enable a gap in service to be filled from a single site, as opposed to 2 or more sites, if more than one site of minimum height and visual intrusiveness is deemed in the public interest to protect the area aesthetics.

Sec. 44-685.07. Type and appearance of wireless telecommunications facilities.

(a) Wireless telecommunications facilities cannot be artificially lighted or marked, except as required by law.

(b) Telecommunications towers must be constructed as a freestanding lattice or monopole structures. New guyed towers will not be permitted after the November 19, 2007.

(c) Towers must be of a galvanized finish or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings, as approved by the board of adjustment, and must be maintained in accordance with the requirements of this Chapter.

(d) For any wireless facility for which lighting is required under the FAA's regulations, or any legal requirements has lights attached, the lighting must be a fast flashing strobe, and include technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level terrain situation. Such device must be compliant with FAA regulations. A physical shield may be used with the strobe, as long as the light is able to be seen from the air, as required by the FAA.

Sec. 44-685.08. Security of wireless telecommunications facilities.

All wireless telecommunications facilities and antennas must be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

(a) All antennas, towers and other supporting structures, including guy wires, must be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and

(b) Transmitters and telecommunications control points must be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

Sec. 44-685.09. Signage.

Wireless telecommunications facilities must contain signs to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities.

(a) A sign on the facility enclosure must contain the FCC registration site, the name(s) of the owner(s) and operator(s) of the facility as well as emergency phone number(s).

(b) A sign must be on the equipment shelter or shed of each service provider and be located so as to be visible from the access point of the site and must identify the equipment shelter of the applicant. The sign must contain the name(s) of the owner(s) of the equipment as well as emergency phone number(s).

(c) Signs cannot be larger than 4 square feet in area. Signs cannot be lit unless the lighting is required by applicable provisions of law. No other signage, including advertising, is permitted on any facilities, antennas, or antenna supporting structures, unless required by law.

Sec. 44-685.10. Utilities.

(a) Prior to the issuance of a zoning authorization permit, the applicant may be required to submit a National Environmental Policy Act checklist required by the FCC.

(b) All utilities at a wireless telecommunications facilities site must be installed underground and in compliance with all laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The County may waive or vary the requirements of underground installation of utilities when, in the opinion of the County such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.

Sec. 44-685.11. Lot size and setbacks.

All proposed wireless telecommunications facilities must be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances:

(a) A distance equal to the height of the tower or other wireless telecommunications facility structure plus 10% of that height; or

(b) The existing setback requirements of the underlying zoning district.

Sec. 44-685.12. Fees.

Non-refundable fees, which are set by the board of commissioners and subject to change as may be warranted and justified, will be charged for the following:

(a) Zoning permit fees for the construction of a new tower or increasing the height of a tower by more than 6 feet;

(b) Attaching or collocating on an existing tower or structure, where the height is either not increased, or is increased by 6 feet or less; or

(c) A modification to an existing facility.

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Sec. 44-685.13. Retention of expert assistance.

(a) The County may hire a consultant and/or expert necessary to assist the County in reviewing and evaluating the application for a proposed tower, collocation, or modification. The County may also request expert assistance for other issues, in order to ensure the general health, safety and welfare of the public.

(b) The cost of the expert assistance will be paid by the applicant. The cost is included in the zoning authorization permit fee.

Sec. 44-685.14. Submittal requirements – New wireless telecommunication facilities/or modifications that increase the height of the facility by more than 6 feet.

All applications for a special use permit or a zoning authorization permit for wireless telecommunications facilities, or any modification of such facility which increases the height of a facility structure by more than 6 feet, must comply with the requirements of this Chapter and include the following unless waived at the pre-application meeting pursuant to Sec. 44-685.02. Any required certifications must be done by a qualified North Carolina licensed professional engineer acceptable to the County, unless otherwise noted.

Note: A collocation, where the antennae increases the height of the facility by 6 feet or less, is located on the top of a tower, and does not contain appendages for multiple additional collocations, would constitute a collocation and must comply with the requirements of Sec. 44-685.18.

All applications must be submitted to the County Planning Department. The following information must be included:

- (a) The non-refundable special use, zoning authorization permit fee;
- (b) The name, address and phone number of the person preparing the application;
- (c) The 911 address and tax map parcel number of the property;
- (d) The name, address and phone number of the property owner;
- (e) The name, address and phone number of the applicant (service provider), including the legal name;
- (f) If the owner of the tower or structure is different than the applicant, both names and all necessary contact information must be provided;
- (g) Site plan requirements.
 - (1) The zoning district or designation in which the property is situated;
 - (2) The size of the property on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
 - (3) The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the application;
 - (4) If attaching to an existing tower, an elevation plan showing the vertical rendition of the tower identifying all users and attachments to the tower and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - (5) If attaching to a building or other structure, a site plan showing the proposed attachments and all related fixtures, structures, appurtenances and apparatus, including height above the roof or balustrade, whichever is appropriate;
- (6) The azimuth, size and centerline height location of all proposed and existing antennae on the supporting structure;
- (7) The number, type and model of the antenna(s) proposed, along with a copy of the specification sheet(s) for the antennas;
- (8) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- (9) The number, type and design of the telecommunications tower(s) and antenna(s) proposed and the basis for the calculations of the telecommunications tower's capacity to accommodate multiple users.
- (h) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities.
- (i) All wireless telecommunications facilities must contain a demonstration that the facility be sited so as to be the least visually intrusive as reasonably possible and thereby have the least

adverse visual effect on the environment and its character, on existing vegetation, and on the community in the area of the wireless telecommunications facility. The County reserves the right to require the use of stealth or camouflage technology or technologies such as distributive antenna system technology (DAS) or its functional equivalent to achieve this goal, subject to approval by the board of adjustment. This may require the placement of 2 visually unobtrusive towers, as opposed to one tower which compromised the viewshed.

(1) All antennas attached to a tower or other structure must be flush mounted or as near to flush mounted as is possible without prohibiting or having the effect of prohibiting the provision of service, or prove technically with hard data and a detailed narrative, that flush mounting cannot be used and would serve to prohibit or have the effect of prohibiting the provision of service.

(2) Any antennas attached to a building or other structure with a facade, must be mounted on the facade, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure on which the antenna is attached.

(3) If attaching to a water tank, mounting on the top of the tank or the use of a corral is only permitted if the applicant can prove that to locate elsewhere will prohibit or have the effect of prohibiting the provision of service. The provisions of the preceding subsection (n)(2) also apply to any attachment to a water tank.

(j) A Visual Impact Assessment must be furnished which must include:

(1) A computer generated "zone of visibility map," with a minimum of one mile radius from the proposed structure, must be provided in order to illustrate locations from which the tower may be seen.

(2) Pictorial representations (photo simulations) of "before and after" views from key viewpoints both inside and outside of the County as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. The applicant must provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed telecommunications facility.

(3) A written description of the visual impact of the proposed facility, including, as applicable, the tower base, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

(4) The applicant must, in a manner approved by the County, demonstrate and provide in writing and/or by drawing how it will effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.

(5) The applicant must furnish written certification that the wireless telecommunications facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.

(k) Both the wireless telecommunications facility and any and all accessory or associated facilities must maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This includes the utilization of stealth or concealment technology as may be required by the board of adjustment.

(l) If deemed appropriate at telecommunications site, by the planning director, an access road, turn-around space and parking must be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, must be made to the extent practicable. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe, as determined at a site visit, the application must contain a commitment to remedy or restore the road or turn around space so that is serviceable, safe and in compliance with applicable regulations. Road construction must at all times minimize

ground disturbance and vegetation cutting. Road grades must closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. Road construction must comply with all applicable regulations.

(m) A person who holds a special use permit for wireless telecommunications facilities must construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, construction, safety and safety-related codes adopted by the County, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. (The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.)

(n) A holder of a special use permit or other authorization granted under the provisions of this Chapter, must obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.

(o) The telecommunications tower must be structurally designed to accommodate at least 6 antenna arrays in regard to the load and stress created on the structure, with each array to be sited in such a manner as to provide for flush attachments to the greatest extent possible with the minimum separation necessary without causing interference. An intermodulation study must be submitted to justify design claims related to interference. A claim of interference because of a need to have greater than 6 feet of vertical clearance between facilities, measured from the vertical centerline of one array to the vertical centerline of another, must be proven by technical data showing that there is no technological alternative that would enable the service to be provided that would require less vertical space. This requirement may be waived, provided the applicant, in writing, demonstrates that the provisions of future shared usage of the wireless facility is not feasible or if collocation is technically or commercially impracticable.

(p) A statement that the proposed wireless telecommunications facilities will be maintained in a safe manner, and in compliance with all conditions of the zoning authorization permit, without exception, unless specifically granted relief by the board of adjustment in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, state and Federal laws, rules, and regulations;

(q) Verification that the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in North Carolina.

(r) The application must be signed by an authorized individual on behalf of the applicant.

(1) The applicant must disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new telecommunication tower that it constructs;

(2) If attaching to an existing tower, the age of the tower in years, including the date of the grant of the original permit or authorization for the tower;

(s) Additional submittal requirements – for constructing a new tower.

(1) A written report demonstrating meaningful efforts to secure shared use of existing telecommunications tower(s) or the use of alternative buildings or other structures within the County that are at or above the surrounding tree height or the tallest obstruction and are within one mile of the proposed tower. Copies of written requests and responses for shared use must be provided along with any letters of rejection stating the reason for rejection.

(2) Telecommunications towers are prohibited in major subdivisions, in the Mixed Use Overlay (MUC-O), on Bakers Mountain and Anderson Mountain unless the applicant provides documentation to demonstrate that the tower is necessary, that the area cannot be served from outside the district

even by adding additional height to an existing facility, that no existing or previously approved wireless telecommunications or existing structure can reasonably be used for the antenna placement, and that an alternative type of facility cannot be used to provide wireless telecommunications service to the district.

(3) The applicant must provide certification by a professional engineer licensed in the state, along with documentation (a structural analysis), including calculations, that prove that the tower or other structure and its foundation as proposed to be utilized are designed and were constructed to meet all local, state, federal and ANSI structural requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new facility.

(t) Any existing towers, and towers which were approved but not yet constructed, must be shown on the propagation map.

(u) The applicant for a new tower must submit a letter of intent committing the owner of the proposed new tower, and his/her successors in interest, to negotiate in good faith for the shared use of the proposed tower by other telecommunications service providers in the future. This letter is a condition of the permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter must commit the new tower owner and their successors in interest to:

(1) Respond within 60 days to a request for information from a potential shared-use applicant;

(2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications service providers; and

(3) Allow shared use of the new tower if another telecommunications service provider agrees in writing to pay reasonable charges.

(4) Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.

(v) The holder of a special use permit must notify the County of any intended modification of a wireless telecommunication facility and shall apply to the County to modify, relocate or rebuild a wireless telecommunications facility.

(w) *Lighting.* The applicant must provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the telecommunications tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Regulation Part 77. This requirement is for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with, and all responses from the FAA, along with any related correspondence must be provided before an application can be considered complete.

(1) For any wireless facility for which lighting is required under the FAA's regulations, or for any reason has lights attached, all lighting must be a fast flashing strobe, acceptable to the FAA, affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used with the strobe, as long as the light is able to be seen from the air, as intended by the FAA.

(2) In the event a tower that is lighted is modified, at the time of the modification the County may require that the tower be retrofitted with the technology set forth in Subsection (aa)(1) above.

(x) Additional submittal requirements — when increasing the height of an existing tower by more than 6 feet, or adding appendages to accommodate multiple collocations:

(1) If attaching to an existing tower, a description of the type of tower, i.e. e.g. guyed, self-supporting lattice or monopole;

(2) If attaching to an existing tower, a description of the make, model, type and manufacturer of the tower and the structural design calculations, certified by a professional engineer licensed in North Carolina, proving the tower's capability to safely accommodate the facilities of the applicant without change or modification;

(3) If attaching to an existing tower, a copy of the latest ANSI report done pursuant to the latest edition of ANSI-EIA/TIA 222F - Annex E for any self-supporting tower that is 5 years or older, or for a guyed tower that is 3 years or older. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report must be done and submitted as part of the application, along with evidence that any dangerous conditions have been corrected;

(4) A signed statement, signed and sealed by a professional engineer licensed in North Carolina, that the facility complies with all applicable federal requirements relating to radio frequency (RF) regulations.

(y) Additional submittal requirements — when attaching to a structure, as opposed to a tower:

(1) If the structure proposed to be attached to is a tower that has not previously been permitted under this Chapter, or unless the applicant can provide proof that this was provided at the time of the initial application for the tower or other structure, the applicant must provide a copy of the installed foundation design, as well as a geo-technical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure;

(2) If attaching to an existing structure, as opposed to a tower, a structural report signed by a professional engineer licensed to do business in North Carolina and bearing that engineer's currently valid stamp, showing the structural adequacy of the structure to accommodate the proposed wireless facility(s), including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;

(3) A signed statement, signed and sealed by a professional engineer licensed in the state, that the facility complies with all applicable federal requirements relating to radio frequency (RF) regulations.

(z) If any change or modification to the tower, or other structure to be attached to, is needed, a detailed narrative explaining what changes are needed and why and who will be responsible to assure that the changes are made;

Sec. 44-685.15. Balloon test.

All new towers or attachments on an existing tower/structure that increases the height must have a balloon test in order to better inform the public. The applicant must complete a "balloon test," prior to the board of adjustments public hearing on the application, as follows:

(a) Applicant must arrange to fly, or raise upon a temporary mast, a minimum of a 3 foot diameter brightly colored balloon at the maximum height of the proposed new tower.

(b) At least 14 days prior to conducting the balloon test, a sign must be erected which is clearly visible from the road nearest the proposed site. The sign must be removed no later than 14 days after conducting the balloon test. The sign must be at least 4 feet by 8 feet in size and be readable from the road by a person with 20/20 vision.

(c) The sign must be placed just outside the right-of-way line.

(d) The sign must contain the times and date(s) of the balloon test and the date, time and location of the required board of adjustment hearing, as well as County contact information.

(e) The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test must be advertised by the applicant 7 and 14 days in advance of the first test date in a newspaper with a general circulation in the County and as agreed to by the County. The applicant must inform the County in writing, of the dates and times of the test, at least 14 days

in advance. The balloon must be flown for at least 8 consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date must be on a weekend, but the second date, in case of poor visibility on the initial date, may be on a weekday. A report, with pictures, from various locations of the balloon, and copies of the newspaper advertisements must be submitted to the County prior to the public meeting.

(f) The County will notify all property owners, within 1,500 feet of the proposed tower, of the of the dates and times of the balloon test via first class mail.

Sec. 44-685.16. Extent and parameters of special use permits, zoning authorization permits and zoning compliance certificates for wireless telecommunications facilities.

The extent and parameters of a special use permit for wireless telecommunications facilities are as follows:

(a) No public hearing is required for an application to attach to an existing tower or other structure or to modify an existing wireless telecommunications facility, as long as there is no proposed increase in of height that is greater than 6 feet, including attachments. (b) A special use permit will run with the land and is enforceable, by the County, upon successor owners. (c) A permit may, be revoked for a violation of the conditions and provisions of the permit. The County will give written notice to come into compliance of the violations, to the holder of the permit, along with any options to correct the violation, if any, and a reasonable time frame.

(d) A special use permit to allow for construction of a new tower, expires 24 months from the date of approval, unless tower construction is complete. After obtaining a special use permit from the board of adjustment, but prior to beginning construction, the applicant must submit a signed agreement with a service provider who will actively use the facility within 60 days after tower construction is completed.

(e) After a zoning authorization permit is issued, the applicant must meet all requirements of the County building inspection department. After the final approval from the building inspection department, the applicant must schedule an appointment with the Catawba County Planning Department for the final zoning inspection. The new facility or collocation is not permitted to have power, or provide service until the zoning compliance certificate has been issued by the planning director or his designee.

(f) A bond or security must be submitted to the County within 30 days after tower construction is completed, as outlined in Sec. 44-685.20.

(g) Abandoned towers must be removed at the tower owner's expense.

Sec. 44-685.17. Submittal requirements – Collocations on existing or approved towers and attachments to existing structures, which do not increase the height of the tower or structure by more than 6 feet, and do not contain appendages for multiple additional collocations.

All applications must be submitted to the County Planning Department. The following information must be included:

The following must be included in the application package.

(a) The non-refundable zoning authorization permit fee, set by the board of commissioners, for attaching to an existing tower or other structure without increasing the height shall be.

(b) Documentation must be provided proving that the applicant has the legal right to proceed as proposed on the site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the applicant to attach to the structure.

(c) In its application the applicant must identify on the propagation map, any and all wireless facilities that exist or are planned or approved to be adjacent, or hand-off facilities that would be constructed in the 24 months following the date of the application.

(d) The applicant must include a written statement that the proposed wireless telecommunications facility will be maintained in a safe manner, and in compliance with all

conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, state and federal laws, rules, and regulations.

(e) The applicant must include a written statement that the construction of the wireless telecommunications facility is legally permissible, including, that the applicant is authorized to do business in North Carolina.

(f) Ownership and management requirements.(1) The name, address and phone number of the person preparing the application;

(2) The 911 address and tax map parcel number of the property;

(3) The name, address and phone number of the property owner;

(4) The name, address and phone number of the applicant (service provider), including the legal name;

(5) If the owner of the tower or structure is different than the applicant, both names and all necessary contact information must be provided;

(6) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities.

(g) Site plan requirements.

(1) The zoning district or designation in which the property is situated;

(2) The size of the property on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;

(3) The location, size and height of all existing and proposed structures on the property, identifying the structure where the collocation will be placed.

(4) The azimuth, size and center line height location of all proposed and existing antennae on the supporting structure;

(5) The number, type and model of the antenna(s) proposed, along with a copy of the specification sheet(s) for the antennas;

(h) If any change or modification of the tower or other structure to be attached to is needed, a detailed narrative explaining what changes are needed and why and who will be responsible to assure that the changes are made;

(i) If the structure proposed to be attached to is a tower that has not previously been permitted under this Chapter, the applicant must provide a copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure.

(j) A signed statement, signed and sealed by a professional engineer licensed in North Carolina, that the facility complies with all applicable federal requirements relating to radio frequency (RF) regulations.

(k) To protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas must be mounted on the facade, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling must use camouflage or stealth techniques to match as closely as possible the color and texture of the structure attached to.

(l) If attaching to a water tank, mounting on the top of the tank or the use of a corral will only be permitted if the applicant can prove that flush mounting to the side of the tower will prohibit or have the effect of prohibiting the provision of service. The provisions of preceding Subsection (l) of this Subsection also applies to any attachment to a water tank.

(m) The wireless telecommunications facility, and any and all accessory or associated facilities, must maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This must include the utilization of stealth or concealment technology as may be required by the County and as is practical under the facts and circumstances.

(n) Any wireless facility for which lighting is required under the FAA's regulations, or that for any reason has required lights attached, must meet the requirements of Sec. 44-685.07(d).

(o) As may be appropriate given the facts and circumstances, the applicant must demonstrate and provide in writing and/or by drawing how it will effectively screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility with vegetation which reaches a height of 10 feet, within a 2 year period.

(p) All utilities installed for a new wireless telecommunications facility must be installed underground and in compliance with all laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

(q) If deemed necessary or appropriate, an access road, turn around space and parking must be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, must be made to the extent practicable. Road construction must at all times minimize ground disturbance and the cutting of vegetation. Road grades must closely follow natural contours to assure minimal visual disturbance and reduce soil erosion and must comply with any local or state regulations for the construction of roads. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application must contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations within a reasonable time period.

(r) Additional site plan requirements- when attaching to an existing tower.

(1) An elevation plan showing the vertical rendition of the tower identifying all users and attachments to the tower and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

(2) The age of the tower in years, including the date of the original permit or authorization for the tower;

(3) A description of the type of tower, e.g. guyed, self-supporting lattice or monopole;

(4) The make, model, type and manufacturer of the tower and the structural design calculations, certified by a professional engineer licensed in North Carolina, proving the tower's capability, or need for structural improvement, to safely accommodate the facilities of the applicant without change or modification.

(5) A copy of the latest ANSI Report done, pursuant to the latest edition of ANSI-EIA/TIA 222F - Annex E, and any subsequent amendments, for any self-supporting tower that is 5 years or older or for a guyed tower that is 3 years or older. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report must be done and submitted as part of the application.

(s) Additional site plan requirements- when attaching to an existing structure.

If attaching to a building or other structure, a site plan showing the proposed attachments and all related fixtures, structures, appurtenances and apparatus, including height above the roof or balustrade, whichever is appropriate.

(t) Collocations which do not increase the height of a tower, by more than 6 feet, or structure will be deemed complete, and a zoning authorization permit issued unless the County provides notice in writing to the applicant within 45 days of submission, or some other mutually agreed upon timeframe. The notice will identify the deficiencies in the application which, if cured, would make the application complete. The application shall be

deemed complete on resubmission of the additional required materials. The County shall issue a written decision approving or denying an application within 45 days of receiving the completed and/or amended application.**Sec. 44-685.18. Performance and removal security.**

(a) The applicant, and the owner of record of any structure or tower attached thereto, must, jointly or separately, at its cost and expense, be required to place with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000 when constructing a tower.

(b) The full amount of the bond or security must remain in full force and effect throughout the term of the special use permit or zoning authorization permit and/or until the removal of the wireless telecommunications facilities, and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the special use permit. If written proof of the bond or security is not provided to the County within 60 days of the notice, the County shall have the right to revoke the permit.

Sec. 44-685.19. Removal of wireless telecommunications facilities.

(a) Under the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of wireless telecommunications facilities:

(1) Wireless telecommunications facilities with or without a permit have been abandoned for a period of at least 5 years;

(2) Situations caused of a force of nature or by acts of God, in which case repair or removal must be completed within 90 days;

(3) Permitted wireless telecommunications facilities which fall into such a state of disrepair that it creates a health or safety hazard;

(4) Wireless telecommunications facilities have been located, constructed, or modified without first obtaining a permit, or in a manner not authorized.

(b) If the County makes such a determination as noted in Sec. 44-685.27 (a) of this Chapter, then the County shall notify the holder of the special use/zoning authorization permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed. The County may approve an interim temporary use agreement/permit, to enable the sale of the wireless telecommunications facility.

(c) The holder of the special use/zoning authorization permit, or its successors or assigns, must dismantle and remove such wireless telecommunications facility, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the County. However, if the owner of the property upon which the wireless telecommunications facility is located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the County.

(d) If the wireless telecommunications facility is not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has been sent notice, then the County may order officials or representatives of the County to remove the wireless telecommunications facilities at the sole expense of the owner or permit holder.

(e) If, the County removes, or causes a wireless telecommunications facility to be removed, , and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within 10 days, then the County may take steps to declare the wireless telecommunications facility abandoned, and sell any part or component. Any expenses associated with removal is the responsibility of the tower owner.

(f) Notwithstanding anything in this Chapter to the contrary, the County may approve a temporary use permit/agreement for the wireless telecommunications facility, for no more than 90

days, during which time a suitable plan for removal, conversion, or re-location of the affected wireless telecommunications facility must be developed by the holder of the permit, subject to the approval of the County and an agreement to such plan must be executed by the holder of the permit and the County. If such a plan is not developed, approved and executed within the 90 day time period, then the County may take possession of and dispose of the affected wireless telecommunications facility in accordance with this Chapter.

Sec. 44-685.20. Reservation of authority to inspect wireless telecommunications facilities.

In order to verify that the holder of a special use/zoning authorization permit for wireless telecommunications facility and any and all lessees, renters, and/or licensees of a wireless telecommunications facility, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facility, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

Sec.44-685.21. Adherence to state and/or federal rules and regulations.

(a) To the extent that the holder of a permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a permit must adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

(b) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a permit for wireless telecommunications facilities, then the holder of such a permit must conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Sec. 44-686 - 699. Reserved

This ordinance shall become effective on December 1, 2007.

9. Appointments.

Commissioner Lail recommended the appointment of Ms. Frances Landaas for a first term on the WPCOG Aging Advisory Committee to replace Ms. Esther Ramseur and Ms. Gina Griffith for a first term on the Nursing and Rest Home Advisory Board to replace Ms. Margaret Edwards.

These recommendations came in the form of motion and the motion carried unanimously.

10. Consent Agenda:

County Manager J. Thomas Lundy presented the following two items on the consent agenda:

a. A request for the Board to approve a revision to the current Mental Health budget by \$1,804,316 bringing it to \$21,631,912. This revision is due to the General Assembly not adjourning until August, it takes the Mental Health Department some time to determine the appropriate allocation of funds. This revision adds no new positions and requests no additional County funding. New State funds, allocated to the Mental Health Trust Fund in the amount of \$746,383, would be used as follows: \$236,400 would be used to strengthen crisis services designed to decrease admissions to State facilities, as follows: \$9,000 for an Easter Seals contract, \$20,000 for a contract with the Sheriff's Office to provide transportation to facility-based crisis services, \$74,600 for an additional nursing position at Catawba Valley Medical Center to assist in the triage of consumers seeking crisis services, \$50,000 to support indigent care for inpatients at Frye Regional Medical Center and

\$82,800 for enhancement of emergency and mobile crisis services through Catawba Valley Behavior Healthcare. \$121,700 would be used to strengthen substance abuse services as follows: \$72,570 for The Cognitive Connection, an outpatient substance abuse provider, and \$49,130 to Exodus Homes, which provides a safe housing alternative that ensures a sense of stability. \$98,200 would be used for services to clients with traumatic brain injuries, and \$290,083 would support programs and services at the local level to serve individuals residing in State mental health, developmental disabilities and substance abuse service institutions. Local funds in the amount of \$17,443, received from the Alcohol Beverage Control Board, would be used for substance abuse treatment.

Based on current contract commitments and increased service demands, additional funds are being appropriated for Medicaid Contract services in the amount of \$800,000. The Local Managing Entity (LME) is only billing Therapeutic Foster Care and Target Case Management for providers. Due to a one year interlocal agreement that created a partnership for the provision of mental health services in Catawba and Burke counties, the Catawba LME has received an additional \$3068 to support Burke's County share funds, bringing the total Fiscal Year 2007/08 County share participation to \$147,000. Mental Health Services of Catawba County has received additional LME Systems Management Funding in the amount of \$212,422, due to the impact of adjustments made to the LME cost model, which will be used to appropriately meet staffing requirements and operational needs. Lastly, Mental Health Fund Balance in the amount of \$25,000 would be appropriated for Catawba Youth Services, an area provider, to assist with startup costs to create an adult family care home, which will assist with housing needs of young adults, aged 19-22, who have aged out of the system used with children.

b. A request from the Sheriff's Department for the Board to accept grant funds from the U.S. Bureau of Justice Assistance in the amount of \$3341.53 to purchase bulletproof vests. Funding for twenty-seven vests was originally requested, but the grant received will only cover a 50% match for about fourteen vests. Matching funds in the amount of \$5000 were allocated in the Narcotics Seized Funds Account during the fiscal year 2007-08 County budget process, as required under the conditions of the grant.

Chair Barnes noted that these items had been recommended by subcommittees, and asked if any item should be broken out of the consent agenda. None were requested to be broken out. Commissioner Barger made a motion to approve the items on consent agenda. The motion carried unanimously.

11. Departmental Report.

A. Information Technology/Communications:

Terry Bledsoe, Chief Information Officer, presented a request for the Board to award the contract for a VoIP E911 Phone System to Wireless Communications in the amount of \$293,848.97 to Wireless Communications, Inc. A County lease for the current E-911 phone system expired in September. The new system will move the County's Communications Center further toward being Next Generation 911 (NG911) compliant. NG911 moves from a strictly voice based system to a data based system and will allow for text messaging and the transfer of data, from sources such as OnStar, directly to emergency vehicles. The replacement of the current phone system to VoIP is the first step in moving to NG911. Procurement of information technology goods and services is authorized under North Carolina General Statute 143-129.8, which authorizes local governments to use a Request For Proposal procedure that offers more flexibility than a formal invitation for bid. The statute provides a more relaxed standard for awarding contracts, allowing a local government to choose a contract that best meets its needs and negotiate with any vendor to obtain a contract that offers the best solution for that government.

In order to preserve the confidentiality of proposals during the evaluation and negotiation process, proposals are not subject to public inspection until a contract is awarded. On September 23, 2007, four proposals were received from the following companies: InterAct Public Safety Systems, Winston-Salem, NC for a Zetron CPE E911 Solution; MicroData, St. Johnsbury, VT for a microDATA X-Solution; Embarq, Hickory, NC for a Sentinel Patriot E911 System and Positron Public Safety System; and Wireless Communications, Inc., Charlotte, NC for a Sentinel Patriot E911 System.

After a review of the proposals, staff recommended the contract be awarded to Wireless Communications, Inc. The other proposed systems either did not meet County specifications, have not been in service for a long enough period of time to have a proven track record, or were not recommended due to system and servicing costs. Wireless Communications, Inc. proposed a Sentinel Patriot E911 System which meets County specifications and is the best solution based on system, service and costs. Wireless Communications is a proven vendor for Catawba County, has provided radio communications systems in the past, and currently maintains the County's radio system. Staff is also requesting funding in the amount of \$15,403.33 for an additional Command Post portable answering position. This will provide additional answering capacity for the Communications Center and allow for an answering position in the Mobile Emergency Operations Center or any location in which IP-based communication can be established. Vice-Chair Beatty made a motion to award the bid to Wireless Communications, Inc. The motion carried unanimously.

B. Utilities and Engineering:

Jack Chandler, Public Services Administrator, presented a request for the Board to award a bid in the amount of \$3,951,280, for construction of the Blackburn MSW Subtitle D Landfill, Unit 3, Phase 1 to Shamrock Environmental Corporation of Browns Summit, NC, and the approval of a contract for construction administration services to McGill Associates, PA of Hickory, NC in the amount of \$124,900.

In accordance with State law and in keeping with Catawba County's rich history of environmental awareness, Catawba County began using Subtitle D Landfill cells in 1998. These cells use a specially developed plastic liner, under areas where solid waste is being deposited, to collect and control liquid runoff from within the solid waste. Catawba County is continuing this process by moving to the construction of a third five-year Subtitle D Landfill cell at the Blackburn Landfill Facility.

Seven bids for construction of the Subtitle D Landfill Unit 3, Phase 1, were received on October 25, 2007, as follows: Shamrock Environmental, \$3,951,280; New Dominion Construction, \$3,989,264.65; Cooper, Barnett, & Page, \$4,550,895.04; Clary Hood, Inc., \$4,734,948; T&K Construction, LLC, \$4,833,823; Morgan Corporation, \$5,167,285.57 and Phillips & Jordan, Inc., \$5,511,345.40.

McGill Associates reviewed the bids for accuracy and completeness. The lowest base bid was submitted by Shamrock Environmental Corporation, in the amount of \$3,951,280. Shamrock Environmental is appropriately licensed and capable of performing the work. The company has extensive experience in landfill construction, and information provided on previous projects indicates it adhered to project budgets and schedules. McGill Associates contacted owners of previously completed landfill projects and construction quality assurance consultants for references. All comments received were positive and McGill Associates recommended the contract be awarded to Shamrock Environmental.

Construction administration services coordinates the owner, contractors and sub-contractors associated with a project, conducts monthly progress meetings, observes the progress and quality of the work performed, and approves shop drawings, tests results, pay requests, and other situations that may arise. County staff recommended approval of a contract with McGill Associates for construction administration services. Funding for the project is included in the Solid Waste Management 2007/08 budget; therefore no new appropriations are needed. All costs associated with this project are funded from the Solid Waste Enterprise Fund, which is derived from solid waste tipping fees containing no tax proceeds. The Board's Policy and Public Works Subcommittee recommended approval of the awarding of the bid for construction of the Blackburn MSW Subtitle D Landfill, Unit 3, Phase 1 to Shamrock Environmental Corporation, in the amount of \$3,951,280, and approval of a contract for construction administration services on this project to McGill Associates in the amount of \$124,900.

County Manager Lundy pointed out that the Board would be asked to take action on a Quality Assurance Contract and Mr. Chandler explained that the difference between the administrative aspect and the quality assurance was Construction Quality Assurance (CQA) is required separately by General Statute and the firm that has this role does not get into the administrative issues

between the owner and the contractor. The CQA firm conducts testing of the lining throughout the process, are on site throughout construction and statute requires that this is a third party and that contract will be approximately \$280,000 that will come before the Board for approval. Vice-Chair Beatty asked Mr. Chandler to advise those present that pre-buying gravel for this project had resulted in approximately \$400-500,000 in savings. Commissioner Hunsucker made a motion to award this bid to Shamrock Environmental and McGill Associates. The motion carried unanimously.

12. Other Items of Business. None.

13. Attorneys' Report. None.

14. Manager's Report.

County Manager J. Thomas Lundy requested the Board consider going into closed session, pursuant to North Carolina General Statute 143-318.11(a)(5) to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease. Mr. Lundy stated he did not expect any action to be taken in closed session. Vice-Chair Barbara Beatty made a motion to go into closed session at 9:15 p.m. The motion carried unanimously.

15. The Board returned to open session at 9:41 p.m. and took no action on matters discussed in closed session. Commissioner Barger made a motion to adjourn at 9:42 p.m. The motion carried unanimously.

Katherine W. Barnes, Chair
Board of Commissioners

Barbara E. Morris, County Clerk